

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DOUGLAS RAY NELSON,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C21-1448 RSM

**ORDER GRANTING MOTION FOR
OVERLENGTH**

This matter is before the Court on Defendant's motion to file an overlength brief. Dkt. 15. Defendant requests permission to exceed the 18-page limit for Defendant's Response Brief by 13 pages, based on Plaintiff's "sweeping constitutional argument." *Id.* at 1. Defendant states the additional pages are needed so the government can "address several legal doctrines." *Id.*

In his Opening Brief, Plaintiff raised two constitutional arguments: (1) that the Administrative Law Judge and the Appeals Council members were not properly appointed by former Acting Commissioner Nancy Berryhill or by any subsequent Commissioner or Acting Commissioner because Acting Commissioner Beryhill's term ended under the Federal Vacancies Reform Act; and (2) that the structure of the Social Security Administration violates the separation of powers under *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183 (2020). *See* Dkt. 11 at 14–18. The Court notes that Plaintiff's second argument was

1 recently addressed by the Court of Appeals in *Kaufmann v. Kijakazi*, 32 F.4th 843 (9th Cir.
2 2022), therefore the Court finds that an additional 13 pages is not needed. However, the Court
3 recognizes the significance of Plaintiff's constitutional arguments and Defendant's need to fully
4 address both the constitutional issues raised and Plaintiff's other arguments.

5 Accordingly, it is hereby ORDERED:

- 6 • Defendant shall have up to and including an additional 9 pages for the Responsive
7 Brief; and
- 8 • Plaintiff shall have the same amount of additional pages for the Reply Brief.

9 DATED this 3rd day of June, 2022.

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11 RICARDO S. MARTINEZ
12 CHIEF UNITED STATES DISTRICT JUDGE
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